

Further, the Examiner has apparently failed to consider the references cited on the Information Disclosure Statement filed on February 10, 2004. Applicant requests the Examiner to consider the references cited on the IDS and include the initialed Form 1449 in any subsequent action.

Claims 1-21 are all the claims pending in the application. The Examiner has rejected claims 1-21 under 35 U.S.C. § 103(a). Applicant respectfully traverses.

Rejections under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-21 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dworkin (US Patent No. 4,992,940) in view of Amazon.com. In response, Applicant submits that the rejection is improper because the Examiner has failed to establish a prima facie case of obviousness. In particular, the combination of Dworkin and Amazon.com fails to teach or suggest the limitations of independent claims 1-3, 10-12, and 19-21.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The Examiner initially relies on the Dworkin reference. Dworkin teaches a system for providing information from various suppliers corresponding to a user's search criteria for a particular type of product. After receiving the information from the various suppliers, the user

may choose to order a particular product from among those listed. The system of Dworkin receives this order and forwards it to the specified supplier. (Dworkin at column 7, line 23 - column 8, line 37).

However, Dworkin fails to teach or suggest the final selling price determination disclosed by Applicant. For instance, claim 1 includes the limitation that “the order-receiving center terminal determines a final selling price of the product ordered by the buyer terminal based on a standard selling price of the ordered product, a period from the time of order to the delivery date and a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...” The relevance of this feature is described at page 3, line 16 - page 4, line 9 of the specification, wherein prices are determined to be less expensive for earlier orders to induce purchasers to place orders sooner, thereby allowing suppliers to confirm production quantity at an earlier stage.

Dworkin, though, teaches only providing a product price and shipping costs. Thus, while Dworkin may teach determining a selling price based on a standard selling price of the product and a period of time of order to delivery date, Dworkin utterly fails to teach the determination of a selling price based on a total order quantity for a particular delivery date *that has previously been accepted by the time order acceptance is closed*. Indeed, Dworkin is completely silent on order quantities for specific delivery dates. Dworkin merely teaches providing “the price of the product, including possible quantity discounts.” (Dworkin at column 7, lines 38-40). There is simply no teaching or suggestion for determining a selling price based, in part, on a total order

quantity for a specific delivery date that has been accepted by the time order acceptance is closed, as required by claim 1.

The teaching of Amazon.com is similarly deficient. The Amazon.com reference merely teaches that shipping costs for orders depend upon the method and option chosen. (see Amazon.com reference at the “Help/Shipping” page). Amazon.com suggests nothing about determining a final selling price based on a total order quantity for a particular delivery date that has been accepted by the time the order is closed.

Therefore, the combination of Dworkin and Amazon.com fails to teach all the claim limitations of claim 1, and the rejection is necessarily improper at least because the Examiner has failed to establish a prima facie case of obviousness. Accordingly, Applicant requests the withdrawal of the rejection of claim 1.

Likewise, claim 10 requires the “order-receiving center terminal comprises a final price determining means for i) determining a final selling price of the product ordered by the buyer terminal based on a standard selling price of the ordered product, a period from the time of order to the delivery date and ***a total order quantity for the delivery date that has been accepted by the time order acceptance is closed...***” Applicant submits that the rejection of claim 10 is likewise improper for the reasons discussed above.

Also, claim 19 requires “the order-receiving center terminal computer as a final price determining means for i) determining a final selling price of the product ordered by the buyer terminal computer based on a standard selling price of the ordered product, a period from the

time of order to the delivery date and *a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...*” Thus, Applicant submits that the rejection of claim 19 is improper for the reasons discussed above relative to claim 1.

Further, claim 2 requires that the order-receiving terminal “determines a final selling price of the product placed an order by the buyer terminal based on a standard selling price of the ordered product, a period from the time of order to the delivery date, and *a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...*” As discussed above, Dworkin and Amazon.com fail to teach or suggest such a final selling price determination.

Claim 2 additionally requires the order receiving terminal “iii) resets, upon accepting an order from the buyer terminal, the base price of the product in the delivery-date-basis base price menu for the delivery date specified by the order based on the so-far accepted total order quantity of the product for the same delivery date and a period from the present time point to the delivery date and iv) resets, at a predetermined timing, the base prices of the delivery-date-basis base price menu for respective delivery dates based on the so-far accepted total order quantities of the product for the respective delivery dates and periods from the present time point to the respective delivery dates...” There is simply no teaching or suggestion in Dworkin or Amazon.com for the claimed resetting of the base prices. Further, the Examiner completely fails to address these limitations in the rejection.

Claim 3 requires that the order-receiving terminal “estimates a price, upon receiving the estimation request from the buyer terminal, based on a standard selling price of the product to be estimated, *a so-far accepted total order quantity of the product to be estimated for the desired delivery date counting the order quantity sent with the estimation request* and a period from the present time point to the delivery date...” The combination of Dworkin and Amazon.com suggests nothing about estimating a price on the basis of a so-far accepted total order quantity of the product to be estimated for the desired delivery date counting the order quantity sent with the estimation request.

Further, claim 3 requires the order-receiving terminal “determines a final selling price of the product whose order has been confirmed by the buyer terminal based on the standard selling price of the ordered product, a period from the time of order to the delivery date and a total order quantity of the ordered product for the ordered delivery date that has been accepted by the time order acceptance is closed...” As discussed above relative to claim 1, Dworkin and Amazon.com fail to suggest this feature.

Claim 3 additionally requires the order-receiving terminal “...iii) resets, upon receiving the order confirmation from the buyer terminal, the base price of the ordered product in the delivery-date-basis base price menu for the ordered delivery date based on the so-far accepted total order quantity of the product for the same delivery date and a period from the present time point to the delivery date, and iv) resets, at a predetermined timing, the base prices of the delivery-date-basis base price menu for respective delivery dates based on the so-far accepted

total order quantities for the respective delivery dates and periods from the present time point to the respective delivery dates...” Dworkin and Amazon.com fail to teach or suggest the claimed resetting, as discussed with respect to claim 2.

Claim 11 requires “resetting, upon accepting an order from the buyer terminal, the base price of the product in the delivery-date-basis base price menu for the delivery date specified by the order based on the so-far accepted total order quantity of the product for the same delivery date and a period from the present time point to the delivery date...” As demonstrated above relative to claim 2, Dworkin and Amazon.com fails to teach or suggest the claimed resetting.

Further, claim 11 requires “a final price determining means for i) determining a final selling price of the product ordered by the buyer terminal based on a standard selling price of the ordered product, a period from the time of order to the delivery date, and ***a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...***” As discussed above relative to claim 1, Dworkin and Amazon.com fails to teach or suggest such a price determination.

Claim 12 requires “B) the order-receiving center terminal comprises: a) a delivery-date-basis base price determining means for...ii) resetting, upon accepting an order confirmation from the buyer terminal, the base price of the product in the delivery-date-basis base price menu for the delivery date specified by the order based on the so-far accepted total order quantity of the product for the delivery date and a period from the present time point to the delivery date, and iii) resetting, upon a predetermined timing, the base prices of the delivery-date-basis base price

menu for respective delivery dates based on periods from the present time point to the respective delivery dates and so-far accepted total order quantities of the product for the respective delivery dates...” As discussed above relative to claim 2, Dworkin and Amazon.com fail to teach or suggest the claimed resetting.

Also, Claim 12 requires “b) a price estimating means for i) estimating a price, upon receiving a request for estimation from the buyer terminal, based on a standard selling price of the product to be estimated, *a so-far accepted total order quantity of the product for the delivery date counting the order quantity sent with the estimation request* and a period from the present time point to the delivery date...” Additionally, claim 12 requires “c) a final price determining means for i) determining a final selling price for the confirmed order based on the standard selling price of the ordered product, a period from the time of order to the delivery date, *a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...*” Again, as discussed above, the combination of Dworkin and Amazon.com suggests nothing about the claimed price determination.

Claim 19 requires “B) the order-receiving center terminal computer as a final price determining means for i) determining a final selling price of the product ordered by the buyer terminal computer based on a standard selling price of the ordered product, a period from the time of order to the delivery date and *a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...*” As discussed above relative to claim 1, there is no teaching or suggestion for the final selling price determination as claimed.

Claim 20 requires “(C) the order-receiving center terminal computer as: a) a delivery-date-basis base price determining means for...ii) resetting, upon accepting an order from the buyer terminal computer, the base price of the product in the delivery-date-basis base price menu for the delivery date specified by the order based on the so-far accepted total order quantity of the product for the delivery date and a period from the present time point to the delivery date, and iii) resetting, upon a predetermined timing, the base prices of the delivery-date-basis base price menu for respective delivery dates based on periods from the present time point to the respective delivery dates and so-far accepted total order quantities of the product for the respective delivery dates...” Again, as discussed relative to claim 2, there is no teaching or suggestion in the combination of Dworkin or Amazon for the claimed resetting.

Claim 20 additionally requires “(b) a final price determining means for i) determining a final selling price of the product ordered by the buyer terminal computer based on a standard selling price of the ordered product, a period from the time of order to the delivery date and a ***total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...***” Applicant’s arguments with respect to claim 1 are equally applicable to this rejection, because Dworkin and Amazon.com fails to suggest such a price determination.

Claim 21 requires “(B) the order-receiving center terminal computer as: a) a delivery-date-basis base price determining means for...ii) resetting, upon receiving an order confirmation from the buyer terminal, the base price of the product in the delivery-date-basis base price menu for the delivery date specified by the order based on the so-far accepted total order quantity of

the product for the delivery date and a period from the present time point to the delivery date, and iii) resetting, upon a predetermined timing, the base prices in the delivery-date-basis base price menu for respective delivery dates based on the so-far accepted total order quantities of the product for the respective delivery dates and periods from the present time point to the respective delivery dates...” As Applicant has demonstrated with respect to claim 2, there is no teaching or suggestion in the combination of Dworkin or Amazon for the claimed resetting.

Further, claim 21 requires “b) a price estimating means for i) estimating a price, upon receiving the request from the buyer terminal computer, based on a standard selling price of the product to be estimated, *a so-far accepted total order quantity of the product for the delivery date counting the order quantity sent with the estimation request* and a period from the present time point to the delivery date...” Claim 21 additionally requires “c) a final price determining means for i) determining a final selling price for the order confirmed by the buyer terminal computer based on a standard selling price of the ordered product determined by the supplier of the product, a period from the time of order to the delivery date and *a total order quantity for the same delivery date that has been accepted by the time order acceptance is closed...*” Dworkin and Amazon.com fail to suggest either the claimed price estimating means or the final price determining means, as discussed above relative to claim 1.

Therefore, as demonstrated above, Applicant submits that the rejection of claims 1-3, 10-12, and 19-21 is improper at least because the combination fails to teach or suggest the claim limitations. Also, Applicant submits that the combination of Dworkin with Amazon.com is

improper because it is based on impermissible hindsight reasoning. As discussed above, Amazon.com merely states that shipping costs for order depend upon the method and option chosen. There is no motivation to modify the Dworkin reference in the manner suggested by the Examiner. Thus, the motivation to combine the references is necessarily based on hindsight reasoning provided by the Examiner.

Finally, Applicant submits that dependent claims 4-5, 6-7, 8-9 13-14, 15-16 and 17-18 are allowable at least because of their respective dependency on claims 1-3, 10-12, and 19-21. As Applicant has demonstrated in the foregoing that the rejection of claims 1-3, 10-12, and 19-21 is improper, Applicant therefore requests the rejection of claims 4-5, 6-7, 8-9 13-14, 15-16 and 17-18 be withdrawn.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

RESPONSE UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/977,387

Attorney Docket No.: Q66634

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Brian K. Shelton
Registration No. 50,245

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: March 18, 2005